

1 ANNETTE L. HURST (Bar No. 148738)
2 DANIEL N. KASSABIAN (Bar No. 215249)
3 ELISABETH R. BROWN (Bar No. 234879)
4 HELLER EHRLMAN LLP
5 333 Bush Street
6 San Francisco, California 94104-2878
7 Telephone: +1.415.772.6000
8 Facsimile: +1.415.772.6268
9 Email: Annette.Hurst@HellerEhrman.com
10 Daniel.Kassabian@HellerEhrman.com
11 Elisabeth.Brown@HellerEhrman.com

12 Attorneys for Plaintiffs
13 GYM-MARK, INC. and THE GYMBOREE CORPORATION

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 GYM-MARK, INC. and THE GYMBOREE
18 CORPORATION,

19 Plaintiffs,

Case No.: C 07-03523 JW (HRL)

20 **STIPULATION AND [PROPOSED]**
21 **ORDER FOR CONSENT INJUNCTION**

22 v.

23 CHILDREN'S APPAREL NETWORK, LTD. and
24 MERVYN'S LLC,

25 Defendants.

1 This Stipulation and Order for Consent Injunction is made between Plaintiffs Gym-Mark,
 2 Inc. (“Gym-Mark”) and The Gymboree Corporation (“Gymboree”) (collectively, “Plaintiffs”) and
 3 Defendants Children’s Apparel Network (“CAN”) and Mervyn’s LLC (“Mervyn’s”) (collectively,
 4 “Defendants”), by and through their counsel of record with reference to the following:

5 WHEREAS, on or about July 6, 2007 Plaintiffs filed the complaint in this action entitled
 6 *Gym-Mark, Inc. and The Gymboree Corporation v. Mervyn’s LLC and Children’s Apparel*
 7 *Network, Ltd.*, Case No. C 07-03523 (JW) (HRL), in which Plaintiffs alleged, *inter alia*, copyright
 8 infringement under 17 U.S.C. § 101 *et seq.*, and unfair competition under Cal. Bus. & Prof. Code §
 9 17200 *et seq.* (the “Action”) concerning certain clothing items manufactured, distributed, and
 10 offered for sale by CAN to retailers and distributed to consumers by Mervyn’s, among other
 11 retailers; and

12 WHEREAS, the Parties each now desire to resolve, compromise and settle the Action
 13 without any admission of liability; and

14 WHEREAS, the Parties agree that a consent injunction relating to the manufacture,
 15 distribution, offering for sale or sale by Defendants of the materials depicted in Exhibit 1 is a
 16 necessary and material component of the settlement agreement;

17 NOW, THEREFORE, Plaintiffs and Defendants, by and through their counsel of record,
 18 hereby agree and stipulate that this Consent Injunction shall be entered as a permanent injunction in
 19 this action as follows:

20 1. Defendants CAN and Mervyn’s, and all of their agents, successors and assigns, and
 21 all persons in active concert or participation with any of them are hereby enjoined from further
 22 manufacturing, distribution, offering for sale or sale of the items depicted in Exhibit 1; and

23 2. CAN, in its sole discretion, shall elect either to (a) destroy any remaining inventory
 24 of the Exhibit 1 Items in its possession, custody, and/or control, and within ten business days
 25 thereafter supply Gymboree with an affidavit confirming such destruction, or to (b) donate all
 26 remaining inventory of the items depicted in Exhibit 1 in CAN’s possession, custody, and/or
 27 control (the “Donation”) to a charitable organization requiring as a condition of such Donation that

1 such organization distribute all such items without consideration and entirely outside of the United
2 States and not to one of the countries specified in Exhibit 2 hereto (“Charitable Organization”). In
3 the event that CAN elects option (b) in this Paragraph 2, CAN shall supply Gymboree the name or
4 names of potential Charitable Organization(s), and Gymboree shall approve, which approval shall
5 not be unreasonably withheld, one of such Charitable Organization(s) within five business days ,
6 following which CAN shall complete the Donation and supply a confirming affidavit concerning
7 the completion of the Donation and the Charitable Organization’s agreement to be bound by the
8 foregoing restrictions. The Donation shall not be made to an organization without Gymboree’s
9 approval. In the event CAN elects option (b) in this Paragraph 4, CAN shall have until June 30,
10 2008 to complete the donation in accordance with this paragraph. Notwithstanding, CAN shall use
11 diligent efforts to complete the donation as soon as is practicable following the execution of this
12 Agreement; and

13 3. Defendants CAN and Mervyn’s, and all of their agents, successors, assigns, and all
14 persons in active concert or participation with any of them are hereby enjoined from any future
15 infringement of Copyright Registration No. VAu682-370, including, but not limited to,
16 manufacturing, distribution, offering to sell or selling the garments depicted in Exhibit 1; and

17 4. The Court shall retain jurisdiction over this action to entertain such further
18 proceedings and to enter such further orders as may be necessary or appropriate to implement
19 and/or enforce the provisions of this Consent Injunction.

1 STIPULATED AND AGREED.
2

3 Dated: February 20, 2008

HELLER EHRLMAN LLP

5 By /s/ Annette L. Hurst
6 ANNETTE L. HURST

7 Attorneys for Plaintiffs
8 GYM-MARK, INC. and
9 THE GYMBOREE CORPORATION

10 Dated: February 20, 2008

DORSEY & WHITNEY LLP

11 By /s/ Bruce R. Ewing
12 BRUCE R. EWING

13 Attorneys for Defendants
14 CHILDREN'S APPAREL NETWORK and MERVYN'S
15 LLC

16 IT IS SO ORDERED.

17 Dated: _____

18 By _____
19 The Honorable James Ware
20 United States District Court Judge

ATTESTATION OF E-FILED SIGNATURE

I hereby attest that I have on file all holograph signatures for any signatures indicated by a “conformed” signature (/s/) within this efiled document.

By /s/ Annette L. Hurst
ANNETTE L. HURST

Attorneys for Plaintiffs
GYM-MARK, INC. and THE GYMBOREE
CORPORATION

Heller
Ehrman LLP